

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. RSA No.5687 of 2016 (O&M)
Date of Decision:11.10.2018

Harwinder Singh	Appellant
Vs	
Thana Singh	Respondent

2. RSA No.558 of 2017 (O&M)

Harwinder Singh	Appellant
Vs	
Thana Singh	Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. P.S. Dhaliwal, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

**CM No.14864-C of 2016 in RSA No.5687 of 2016 and
CM No.1200-C of 2017 in RSA No.558 of 2017**

For the reasons mentioned in the applications, the same are allowed. Deficiency in court fee is allowed to be made good.

CM No.1200-C of 2017 in RSA No.558 of 2017

For the reasons mentioned in the application, delay of 54 in re-filing the appeal is condoned.

Application stands disposed of.

Main case(s)

[1]. Vide this common order the aforesaid RSA Nos.5687 of

2016 (O&M) and 558 of 2017 (O&M) are being disposed of.

[2]. Both the appeals have been filed by the defendant against the concurrent judgments and decrees passed by the Courts below in a suit for recovery on the basis of pronote and receipt. In RSA No.5687 of 2016 (O&M), pronote and receipt dated 09.04.2007 in respect of Rs.4,50,266.66 executed by the defendant is involved, whereas in the connected appeal i.e. RSA No.558 of 2017 (O&M), pronote and receipt dated 09.04.2007 in respect of Rs.5,44,000/- executed by the defendant is involved. That is why two separate suits were filed by the plaintiff-Thana Singh against Harwinder Singh (defendant).

[3]. Since common question of law and facts are involved, therefore, for brevity facts have been culled out from RSA No.5687 of 2016 (O&M).

[4]. It was alleged by the plaintiff that defendant borrowed a sum of Rs.4 lakhs from plaintiff as loan on 09.04.2007 and agreed to return the same along with interest @ 2% per month. Pronote and receipt were executed on 09.04.2007 as collateral security in favour of the plaintiff for loan amount and interest. The loan was to be returned along with interest as and when demanded by the plaintiff. It was also alleged by the plaintiff that

the defendant did not repay the loan amount along with interest. In this way, plaintiff claimed an amount of Rs.50,266.66 as interest accrued @ 1% per month from the date of receipt and pronote i.e. 09.04.2007 to 26.04.2008. Plaintiff further claimed future interest @1% per month.

[5]. The suit was contested by the defendant on number of grounds. Defendant alleged that the plaintiff was a travel agent and was involved in sending people abroad by arranging their visas and also helping them in paper work for migration to foreign countries. Defendant was residing in Canada along with his wife and he was married in March 2007. Brother of plaintiff was mediator of the said marriage. Plaintiff had extended co-operation to the defendant in terms of complying with the formalities for going abroad after the marriage. In this way, plaintiff and defendant developed proximity. Plaintiff borrowed a sum of Rs.4 lakhs from father of the defendant in good faith and due to cordial relations between them, no document was executed in respect of said transaction. One Bhulla Singh @ Bhola Singh, a Police Officer was tenant in the house of the plaintiff at Moga. Plaintiff in collusion with said Police Officer came to the house of father of the defendant and started demanding Rs.8 lakhs from him on the pretext that the defendant had borrowed the said amount from him while going

abroad. They threatened father of the defendant for non-payment of amount. Father of defendant filed a police complaint against the plaintiff and ASI Bhola Singh. Defendant further alleged that the filing of the suit was the result of evil design and was based on forged documents. The plaintiff had also filed one more recovery suit on the basis of another pronote and receipt of the same date and same amount was involved therein.

[6]. Both the parties went to trial on the following issues:-

- “1) Whether plaintiff is entitled to recover Rs.4,50,266.66 ps on the basis of pronote and receipt dated 9.4.2007? OPP*
- 2) Whether suit of the plaintiff is not maintainable? OPD*
- 3) Whether alleged pronote and receipt are forged and fabricated documents? OPD*
- 4) Whether suit of the plaintiff is barred under order 2 Rule 2 CPC? OPD*
- 5) Relief.”*

[7]. Plaintiff examined himself as PW-2, Ashok Kumar Garg, deed writer was examined as PW-1. Kashmir Singh PW-3 was examined as marginal witness and thereafter evidence was closed. Defendant examined Amarjit Aggarwal as DW-1, Malkeet Singh Dhaliwal as DW-2, Gurpal Singh as DW-3 and Harjinder Kumar Junior Assistant, DTO, Moga as DW-4 and

thereafter defendant's evidence was closed.

[8]. The trial Court discussed issues No.1 to 3 together and found that pronote and receipts were lawfully executed with reference to the statements of scribe and attesting witness. Pronote Ex.P-1 and receipt Ex.P-2 were duly proved by scribe Ashok Kumar Garg PW-1 and witness Kashmir Singh PW-3. Both the scribe and attesting witness have proved the aforesaid documents with reference to necessary particulars of signing the same which was read over and explained to the defendant, who after admitting the same appended his signature in the presence of plaintiff and witnesses. Marginal witness PW-3 also appended his signature on the receipt. Deed Writer PW-1 made specific entry of pronote and receipt in his register after putting his stamp and signature on the pronote and receipt.

[9]. Defendant claimed the pronote and receipt to be forged and fabricated documents and denied his signatures on the documents. He claimed that he used to append his signature in English only, whereas pronote and receipt were having the signature of Harwinder Singh in Punjabi. Defendant examined Malkeet Singh Dhaliwal, Bank Officer of Oriental Bank of Commerce, Branch Dhalleke as DW-2, who brought the record of account of Harwinder Singh opened on 06.06.2003 in which signatures of Harwinder Singh were in English. Defendant also

proved Ex.D-3 to Ex.D-5 i.e. the signatures appearing on saving account of the defendant. He also examined Junior Assistant, DTO, Moga i.e. Harjinder Kumar as DW-4, who proved driving licence Ex.D-1 bearing signature in English of the defendant. On the saving account signatures of defendant were full signatures in the name of Harwinder Singh, whereas on the driving licence, defendant's signatures were in short form i.e. H.S. Johal. Defendant did not appear in the witness box to deny his signatures appearing on the pronote and receipt, rather his father appeared as his attorney as DW-3. Defendant did not produce any expert witness to deny the signatures with reference to any comparison of the signatures appearing on pronote and receipt with any admitted signature of the defendant with other documents or the documents produced by him on record.

[10]. Both the Courts below have found that once execution of pronote and receipt were proved by the plaintiff with reference to the statements of scribe and attesting witness, then initial onus stood discharged by the plaintiff and thereafter the onus shifted upon the defendant to prove that the documents were the result of forgery and fabrication. Defendant himself did not appear in the witness box, nor any expert witness was examined. Defendant could not discharge the onus to prove that

documents were the result of forgery and fabrication.

[11]. The findings recorded by the Courts below are based on appreciation of evidence. Further re-appreciation in Regular Second Appeal cannot be done. The findings recorded by both the Courts below are not found to be the result of any misreading of evidence or suffered with any perversity. No law point worth cognizance is involved in both the appeals. The same are accordingly dismissed in *limine*.

October 11, 2018	(RAJ MOHAN SINGH)
Atik	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No